adjudication and receiving orders should not have been granted on 5 August 1991. With this conclusion, I had allowed the debtor's application with costs and annulled and rescinded the adjudication and receiving orders made against him on 5 August 1991.

SA-MAL (SABAH) CORPORATION SDN. BHD.

v.

DIRECTOR OF LANDS AND SURVEYS, SABAH

HIGH COURT, KOTA KINABALU
TUAN IAN H.C. CHIN J.
[ORIGINATING MOTION NO. K4 OF 1992]
9 FEBRUARY 1994

LAND LAW: Appeal - Land Ordinance (Sabah) s. 41(1) - Appeal against decision of respondent not to alienate land - Whether decision thereof appealable - Whether appeal prohibited by s. 41(1)(d) of the Ordinance - Appeal filed more than thirty days after decision made by respondent - Whether out of time.

This was an appeal by the appellant under s. 41(1) of the Land Ordinance (Sabah) against the decision of the respondent refusing to issue the offer to alienate certain parcel of land to the appellant.

The facts were that on 29 February 1982, the respondent offered to alienate 225 acres of land (the said land) to one Ko-Nelayan, which Ko-Nelayan accepted by paying 25 % of the premium payable therefor on 3 November 1982. About a year later, the appellant applied for 50 acres to be excised from the said land and on 19 September 1984, the application was forwarded by the land office to the respondent.

The appellant solicited the help of the Chief Minister, Sabah, to get the necessary approval for their application, and on 24 January 1984, the Secretary of the Natural Resources (the Secretary), Chief Minister's Office, informed the appellant by letter that the application could be approved on certain terms and conditions.

However, at the direction apparently of the Secretary, the respondent subsequently issued two seperate titles in respect of the said land to Ko-Nelayan giving Ko-Nelayan a lease of sixty years effective 1 January 1985 over the said land. Ko-Nelayan later refused to part with the 50 acres or to comply with any of the terms and conditions laid down in the letter of 24 January 1984. The appellant nonetheless maintained that the Secretary's letter of 24 January 1984 constituted an approval by the State Government of their application for the 50 acres and subsequently demanded that the respondent issue them the offer to alienate the said 50 acres.

The respondent refused and on 16 January 1992 officially wrote to the appellant stating that such offer could not be issued as the offer to alienate in respect of the said land had already been issued to Ko-Nelayan. On 26 March 1992 the appellant filed the present appeal and the primary issue that arose was whether the decision of the respondent not to issue the offer to alienate land to the appellant was appealable and if so, whether the said appeal was filed in time.

Held:

[1] Although by his letter of 14 March 1992 the respondent stated that the decision to refuse to issue the offer was made on 26 February 1992, that decision was in fact conveyed by his letter of 16 January 1992. We are here concerned with the actual date the decision was made and not with what someone said as to when the decision was made. The decision was definitely conveyed by the letter dated 16 January 1992 and received by the solicitor of the appellant on 28 January 1992. The appeal therefore is out of time and ought to be dismissed.

[2] Assuming however that the Court is wrong in concluding that this appeal is out of time, still, on the facts of this case, the appeal ought to be dismissed. The facts showed that it was only after more than one year of the approval of the land to Ko-Nelayan that the appellant made its first move to deprive what was already approved to Ko-Nelayan. It ought to be noted that once the offer to alienate the land had been accepted by Ko-Nelayan on 3 November 1982, the Director of Lands and Surveys is bound to issue the title to the said land to Ko-Nelayan save when Ko-Nelayan fails to meet the terms and conditions imposed on it or to complete all payments or to sign the draft title. No body, not even the then Chief Minister of Sabah, could deprive Ko-Nelayan the said land save with the consent of Ko-Nelayan or through the process of the law.

[3] Although the letter of 24 January 1984 did in fact say that the application of the appellant could be approved subject to the terms and conditions, the said terms and conditions, up to date, had not been fulfilled. There was no agreement concluded between them and in any event Ko-Nelayan had decided not to buy the land of the appellant thereby resulting in one of the conditions for the approval of the 50 acres unfulfilled by the appellant. It cannot be imagined under what law the Secretary was invoking to direct Ko-Nelayan to give up the 50 acres of land and to buy the 13.14 acres of land from the appellant. The fact is that the Secretary did not have such power.

[4] When the respondent herein decided not to issue the offer to alienate land to the appellant, the respondent was in fact making a decision not to alienate the land to the appellant. The decision rejecting any application for land is clearly an exercise of the discretion granted by s. 9 of the Ordinance. This being the case, the appeal is therefore an appeal against a decision not to alienate state land within the meaning of s. 9 aforesaid. The appeal is thus incompetent, it being prohibited by s. 41(1)(d) of the Ordinance.

[Appeal dismissed].

Case referred to:

Julius v. Oxford (Bishop), 49 LJQB 585; 5 App. Cas. 235

Legislation referred to:

Korporasi Kemajuan Perikanan dan Nelayan Sabah (Ko-Nelayan) Enactment 1981

Land Ordinance (Sabah), ss. 4, 9(1), (2), 12, 41(1)(a), (d)

For the appellant - Caroline Liau; M/s. Wong Yapp Chung & Co.

For the respondent - Mohd Salleh Lamsin, State Attorney-General Chambers

JUDGMENT

Ian H.C. Chin J:

This is an appeal under s. 41(1) of the Land Ordinance (Sabah) against the "the decision of the Director of Lands and Surveys Department, Sabah in his original jurisdiction given *vide* his letter dated 26 February 1992 as amended *vide* his letter dated 13 March 1992". The facts giving rise to this appeal are as follows.

On 9 February 1982 Korporasi Kemajuan Perikanan dan Nelayan Sabah ("Ko-Nelayan"), a statutory corporation established by the Korporasi Kemajuan Perikanan dan Nelayan Sabah (Ko-Nelayan) Enactment, 1981, submitted an application for 225 acres of State land ("the said land") and this application was numbered L.A. 82010038. On 29 February 1982 the Director of Lands & Surveys, Sabah, ("the respondent") offered to alienate the said land to Ko-Nelayan and the offer was accepted by Ko-Nelayan on 3 November 1982 when Ko-Nelayan,

pursuant to the terms of offer, paid RM5,625 being payment of 25% of the premium payable to the Government of the State of Sabah, for the said land. Subsequently, on 4 October 1983, Sa-Mal (Sabah) Corporation Sdn. Bhd. ("the appellant") applied for 50 acres to be excised from the 225 acres of the said land that had already been approved to Ko-Nelayan and this application is numbered L.A. 83010208. The appellant thereafter wrote to the then Chief Minister of Sabah on 20 December 1983 and asked for its application for the 50 acres to be approved. The text of this letter reads:

> YAB. Datuk Ketua Menteri
> Jabatan Ketua Menteri
> Bangunan Yayasan
> **Kota Kinabalu**
>
> Yang Amat Berhormat Datuk,
>
> **Per: Permohonan Tanah Kerajaan di Kuala Inanam P.T, 83010208 : seluas 50 ekar Sa-Mal (Sabah) Corporation Sdn. Bhd.**
>
> Dengan segala hormatnya, kami merujuk kepada perjumpaan kita pada 5 September 1983 dimana YAB. Datuk telah meluluskan cadangan untuk memohon tanah Kerajaan seluas lebih kurang 50 ekar di Kuala Inanam berhampiran dengan tanah Syarikat kami seluas 13.14 ekar (sila lihat salinan P.T.No. 83010208 dengan peta yang berwarna kuning dan surat kami bilangan 101/1/12/(27) bertarikh 4 June 1983).
>
> Sebagaimana yang dinasihatkan oleh YAB. Datuk kami telah pun berhubung dengan Konsultant berkenaan dan telah menyediakan cadangan Pelan Pembangunan untuk kawasan itu. (sila lihat Pelan yang dikepilkan).
>
> Pada masa ini, sebagaimana YAB. Datuk sedia maklum, tanah itu adalah masih **Tanah Kerajaan** yang sedang digunakan oleh Ko-Nelayan untuk projek ikan. Walaubagaimana pun projek ini adalah diangapkan tidak sesuai lagi dengan adanya pembangunan Taman Kasihatan yang sedang berjalan dengan baiknya. Akan tetapi, oleh kerana Ko-Nelayan sedang berada didalam tanah ini, permohonan tanah P.T. No.83010208 tidak dapat diproses dan diselasaikan seterusnya oleh Jabatan Tanah dan Ukur tanpa kelulusan daripada YAB. Datuk sendiri.
>
> Oleh hal hal diatas, kami memohon jasa baik YAB. Datuk untuk meluluskan permohonan tanah kami ini, iaitu, P.T.No.83010208 supaya kami dapat melaksanakan projek yang dicadangkan dalam Pelan Pembangunan tersebut diatas. Untuk makluman YAB. Datuk, cadangan kami ini adalah seleras dengan "Pelan Induk" bagi kawasan ini
>
> Sekian dan diucapkan terima kasih.
>
> "Seperjuang Dalam Parti Berjaya"
>
> Yang Iklas,
> Sa-Mal (Sabah) Corporation Sdn. Bhd.
>
> (Signed)
> (Dunstan Dumpangol)
> Pengurusi
>
> s.k. Setiausaha Hasil Bumi
> Jabatan Ketua Menteri
> **Kota Kinabalu**
>
> Pengarah Tanah dan Ukur
> Ibu Pejabat Tanah dan Ukur
> **Kota Kinabalu**
>
> Penolong Pemungut Hasil Tanah
> **Kota Kinabalu**

This letter brought about the response of the Secretary of the Natural Resources ("the Secretary") which is contained in his letter dated 24 January 1984 and since there is dispute as to the interpretation of this letter which is also in Bahasa Malaysia, I will set out the text of this letter:

> Adalah saya dengan hortmatnya merujuk kepada surat tuan bilangan 101/1/12/(28) bertarikh 20 Disember 1983 yang dialamatkan kepada Ketua Menteri dan menyatakan Kerajaan boleh memberi persetujuan seperti berikut:
>
> (i) Tanah seluas 13.14 ekar yang dimileki oleh Syrarikat Sa-Mal Sdn. Bhd. hendaklah dijual kepada Ko-Nelayan;
>
> (ii) Permohonan Sa-Mal boleh di-luluskan dengan syarat:
>
> (a) Kelulusan ini hanya akan berkuatkuasa pada 1 January 1990 (Ini adalah disebabkan supaya kolam ikan Ko-Nelayan dapat digunakan dengan sepenohnya dalam masa 6 tahun);
> (b) Pembangunan perumahan milek perkasa pada ketika intu sudah siap dibena untuk penduduk-penduduk kian bertambah;
> (c) Sa-Mal mestilah membena kolam ikan seperti kolam ikan Ko-Nelayan yang ada sekarang iaitu di tempat yang dihaskan oleh Ko-Nelayan;
> (d) Syarat-syarat yang lain akan dikemukakan oleh pihak Jabatan Tanah dan Ukur.

> Dengan salinan surat ini kepada Ko-Nelayan adalah diminta untuk menyediakan tanah seluas 50 ekar untuk dijadikan kolam ikan, dan sekiranya tidak ada kawasan sesuai di sekitar kawasan sekarang, sila menetapkan kolam tersebut di sekitar Weston. Perbelanjaan akan ditanggung oleh Sa-Mal untuk menggantikan kolam-kolam Ko-Nelayan yang akan ditembus oleh Sa-Mal.

The appellant contended (see para 4 of the affidavit of Edward Goh Geok Seng affirmed on 26 March 1992) that this letter "informed the appellant that its application for the [50 acres] is approved subject to the conditions stipulated in the aforesaid letter and in consideration of such approval, the appellant was required to sell its land held under Country Lease No. 015349845 to...Ko-Nelayan". The respondent contended that the relevant part of the letter when translated should mean that the "application for the said 50 acres of land can be approved on the terms and conditions laid down in the said letter". To this dispute, I will return later. The appellant on 14 February 1984 replied the said letter and agreed to the conditions and concluded its letter by stating:

> Berikutnya, kami akan memulaii perbincangan antara pihak berkenaan syarat-syarat yang sekehendak supaya kelulusan ini mendapat kuat kuasa selanjutnya.

The appellant followed up with a meeting with Ko-Nelayan on 17 March 1984 but we do not know what happened in this meeting. This meeting is referred to in the letter dated 19 March 1984 from the appellant to Ko-Nelayan the text of this letter reads:

> We humbly refer to our meeting held on 17 March 1984 at your office to discuss the implementation of Sa-Mal's involvement to develop the 50 ekars site for Ko-Nelayan as according to the request made by the Chief Minister's Dept. as per their letter of approval ref: MNR.109/47/17-(paragraph 2).
>
> As we have committed to proceed accordingly the terms and conditions as stipulated in the said letter mentioned-above, we would be grateful if you can send us the exact location of the 50 ekars in order that the preliminary study and costing can be done in the soonest possible time.
>
> Thanking you and we look forward to receive your plan.

As for the period between that letter of the appellant of 19 March 1984 and 4 July 1984, we know not what happened as the appellant was silent in his affidavits. However, on 4 July 1984, the appellant wrote to the respondent to maintain that they have been approved, with effect from 1 January 1990, 50 acres of the said land and requested the respondent to take that fact into account when issuing the titles to the said land to Ko-Nelayan and to issue a title to Ko-Nelayan in respect of the 50 acres for a term ending on 1 January 1990. The Assistant Collector of Land Revenue, Kota Kinabalu, had also sprung into action when he, on 19 September 1984, forwarded the said land application of the appellant to the respondent and at the same time informed the respondent that he had called for claim to native customary rights against the said 50 acres of the said land to be submitted and that there were none. The secretary again came into the picture when he by a letter dated 25 September 1984 and addressed to both the parties herein (1) advised the parties to enter into an agreement incorporating the terms and conditions spelt out by his letter of 24 January 1984 and (2) stated that the surrender of the 50 acres can be effected after 31 December 1990 and after Ko-Nelayan had taken over the land to be developed by the appellant in accordance with the agreement. The letter was copied to, among others, the respondent with an instruction that the lease to be issued to Ko-Nelayan in respect of the 50 acres should be for a term of 6 years from 1 January 1985. Ko-Nelayan and the appellant then met on 10 October 1984 to discuss the terms of the agreement and as a result of this meeting Ko-Nelayan forwarded a draft agreement to the appellant for its acceptance: this letter reads:

> Korporasi Kemajuan Perikanan dan Nelayan Sabah (Ko-Nelayan) (etc.)
>
> 7 November 1984.
>
> **Without Prejudice**
>
> Sa-Mal (Sabah) Corporation Sdn. Bhd. (etc...)
>
> Tuan,
>
> **Sa-Mal's Proposed Takeover of 50 Acres of Ko-Nelayan's Fish Pond Complex at Kuala Inanam.**
>
> Arising out of a meeting which took place in my office on 10 October 1984, between Ko-Nelayan officials and your Encik Eddie Goh, we have identified a number of points to be incorporated in the agreement between Ko-Nelayan and Sa-Mal. Based on the points that were agreed upon at that meeting and the points that I

thought of subsequently, Messrs Chin, Lau & Wong, at our request, produced a draft agreement to be entered into between Sa-Mal and Ko-Nelayan. I enclose the draft agreement for your perusal and shall be grateful to know if you are agreeable to the terms of the agreement.

We are in the process of finalising the area to be developed as the replacement ponds, and shall revert to you as soon as we receive confirmation that the area is suitable for prawn culture.

Yours faithfully,

(Signed)
(Yee Fong Chun)
Pengurus Besar.

The appellant replied on 15 November 1984 and accepted the terms of the agreement. The appellant also asked that the final draft be prepared and that they be informed of the date of signing. Following the letter of the secretary, the respondent wrote to Ko-Nelayan on 30 November 1984 to explain the need to issue two titles in respect of the said land, one title of which would be in respect of 50 acres of the said land and which tenure was to end on 31 December 1984. It appears that on 28 February 1985 Ko-Nelayan had replied the said letter of the respondent with regards to the issue of two titles. Unfortunately, this letter of Ko-Nelayan was not produced though it was referred to in the letter of the secretary dated 26 March 1985 which I shall shortly advert to. On 28 February 1985, the appellant wrote to the secretary to say that the agreement has been reached with Ko-Nelayan and the letter ended with a statement of hope that "the approval of [their] application will be processed".

The appellant then by a letter issued to the respondent on 2 March 1985 asked that the offer of the 50 acres be "released" to the appellant and for the necessary papers, called RSP, to be issued to allow the survey of the 50 acres to be carried out. Ko-Nelayan had refused to execute the agreement with the appellant. As adverted to earlier, the secretary, by a letter dated 26 March 1985, directed the respondent to issue the two titles in respect of the said land to Ko-Nelayan in accordance with the original accepted offer which was for 60 years, from 1 January 1982 to 31 December 2041; this letter was not made known to the appellant. The matter rests there until more than 6 years later when on 27 August 1991 the said director of the appellant met one Chua Kok Hwa of the Lands & Surveys Department in Kota Kinabalu, following which the appellant on the same date wrote the respondent a letter to register its protest regarding the non-issuance of the offer to alienate the 50 acres to the appellant. The respondent did not respond. The appellant then engaged Messrs P.K. Lim & Co. which issued a letter dated 31 December 1992 to the respondent demanding that the offer to alienate the 50 acres be issued to the appellant within 14 days thereof or else an order of mandamus would be applied for. The respondent replied by its letter of 16 January 1992 stating:

> Dukacita dimaklumkan bahawa Pengeluaran Surat Tawaran untuk P.T.83010208 seluas 50 ekar tidak dapat ditunaikan. Ini disebabkan kesuluruhan kawasan tersebut telahpun dikeluarkan Surat Tawaran kepada Ko-Nelayan atas P.T. 82010038 melalui L.S.128.1..59/49 bertarikh 30 November 1984 dimana dua (2) titles berasingan telahpun dikeluarkan selaras dengan kelulusan MNR.109/47/46 bertarikh 26 Mac 1985. Dengan demikian, proses gengambilan balik kawasan seluas 50 ekar seperti-mana yang dismaksudkan, bolehlah dibuat secara berurusan terus antara Sa-Mal dengan Ko-Nelayan melalui peraturan pindahmilik.

This letter, among other things, clearly states that the request of the appellant for the issue of the offer to alienate the 50 acres cannot be granted. The appellant reacted by again, through their letter dated 12 February 1992, asking for the offer to alienate to be issued. This resulted in the respondent issuing yet another letter, this time on 26 February 1992, where it is stated that the terms and conditions spelt out in the Secretary's letters dated, respectively, 24 January 1984 and 25 September 1984, still hold good even though a title for the 50 acres had been issued to Ko-Nelayan since a transfer from Ko-Nelayan to Sa-Mal would solve the problem. The correspondence continued with the appellant replying by their letter of 4 March 1992 to say that since the title to the 50 acres had yet to be issued to Ko-Nelayan the question of transfer from Ko-Nelayan to the appellant should not arise. The respondent, on 13 March 1992, followed up with another letter to the appellant, to explain that, what he meant by para 3 of his letter of 26 February 1992 is that an agreement between Ko-Nelayan and Sa-Mal has yet to be signed and therefore it is left to the decision of Ko-Nelayan whether or not to transfer the 50

acres to the appellant. This was followed by another letter issued on 14 March 1992 to the appellant to inform them that their application, that is, for the offer to alienate to be issued, cannot be granted and this decision had already been conveyed by his letter of 26 February 1992. The appellant replied to the respondent's letters of 13 and 14 March 1992 and objected to the issue of a title for 50 acres to Ko-Nelayan. The final letters in the whole episode, so far as the evidence show, are a letter of the appellant to Ko-Nelayan dated 23 March 1992 which reads:

Sa-Mal

23 March 1992

Ko-Nelayan,
Etc, Kota Kinabalu.

Tuan,

Per: Sub-Lease Dated: 18 March 1982 in respect of CL: 015349845 (New Title: CL: 015426801) 13.14 Acres.

We refer to the above Sub-Lease and as indicated in our letter dated 7 January 1992, the handing over period shall expire on 31 March 1992.

Pursuant to the letter dated 24 January 1984 from the Setiausaha Hasil Bumi, *vide* MNR.109/47/17, we hereby reiterate our intention to sell the above-mentioned land to you at a consideration to be agreed between us.

We would appreciate if you would kindly grant us a appointment to discuss and settle the sale transaction.

Thanking you,

Yours faithfully,
Sa-Mal (Sabah) Corporation Sdn. Bhd.

(Signed)
(Eddie Goh)

c.c. Setiausaha Hasil Bumi,
Etc...

and Ko-Nelayan's reply on 31 March 1992 to say that they are unable to purchase the land. The present appeal was filed on 26 March 1992. The grounds of appeal, stated in the originating motion dated 9 June 1992, are these:

1. The respondent erred in his decision to issue a title in favour of Ko-Nelayan in respect of the said land in that the decision was contrary to the decision of the Government of the State of Sabah to alienate the said land to the appellant *vide* its letter dated 24 January 1984 and to its direction contained in its letter dated 25 September 1984;

2. The respondent erred in his decision to issue a title in favour of Ko-Nelayan in respect of the said land for a term which contravened the express directive of the Government of the State of Sabah contained in its letter dated 25 September 1984;

3. The respondent erred in his decision of refusing to issue an offer of title in favour of the appellant in respect of the said land under L.A.83010208 as was the intention of the Government of the State of Sabah;

4. The respondent erred in arriving at his decision and has disregarded and failed to consider the import and purpose of the various documents cited to him and in the circumstances the respondent's decision should be set aside.

The first of the ground opposing the appeal was that the time for appealing had expired. Mr. Mohd. Salleh Lamsin, Counsel for the respondent, argued that the decision of the respondent to refuse the demand by the appellant to issue the offer to alienate the 50 acres is contained in the said letter of 16 January 1992 which is addressed to the appellant's erstwhile solicitor, Messrs P. K. Lim & Co., and which was received by the said solicitor on 28 January 1992. The relevant time limited for appeal under s. 41(1)(a) of the Land Ordinance (Sabah) is 30 days from the date of the order or decision appealed against. Mr. Mohd. Salleh Lamsin argued that, assuming the decision is appealable, the appeal was filed out of time because it was filed on 26 March 1992 which was after the 30 days. Ms. Caroline Liau, Counsel for the appellant, argued that the "appeal is within time as it was filed on 26 March 1992 within thirty days of the final letter dated 13 March 1992" and she referred particularly to the sentence in the said letter of the respondent dated 14 March 1992, *supra*, :"keputusan telahpun dimaklumkan melalui surat L.S.333/91 bertarikh 26 Februari 1992 serta penjelasan lanjut L.S.102333/94 bertarikh 13 Mac 1992", as supporting the fact that the decision was made on 26 February 1992. Ms Caroline Liau argument is fastened upon a statement made by the respondent, *supra*, that his decision was announced by a letter of 26 February 1992 when in fact, the decision was conveyed by the letter of 16 January 1992. We are here concerned with the actual date the decision was made and not with what someone

said as to when the decision was made. Ms. Caroline Liau is relying on what someone said as to when the decision was made rather than on when the decision was actually made. The decision was definitely conveyed by the letter dated 16 January 1992 and received by the solicitor of the appellant on 28 January 1992. The appeal is therefore out of time and ought to be dismissed. The reasons why I set out in detail the facts of this case is that I would also have dismissed the appeal on other grounds assuming that I am wrong in concluding that the appeal is out of time and a narrative of the facts, *supra*, is necessary for understanding the reasons for dismissing the application of the appellant.

One of the complaints of the appellant is that the Director had erred in deciding to issue a title to Ko-Nelayan in respect of the 50 acres which, it is contended, is against the decision of the Government of the State of Sabah to alienate the land to the appellant which decision is contained in the said letters of the Secretary dated, respectively, 24 January 1984 and 25 September 1984. It will be recalled that the Secretary's letter dated 24 January 1984 was in response to the appellant's letter dated 20 December 1983 to the then Chief Minister of Sabah asking for the said 50 acres land which had already been approved to Ko-Nelayan, a statutory body established for the poor fishermen, on 29 September 1982 and, in fact, which premium for the land had been paid on 3 November 1982. It was only after more than 1 year of the approval of the said land to Ko-Nelayan that the appellant on 20 December 1983 made its first known move in an attempt to deprive what was already approved to Ko-Nelayan and this came after it had on 4 October 1983 registered an application for the said 50 acres.

It ought to be noted that once the offer to alienate the land had been accepted by the Ko-Nelayan on 3 November 1982, the Director of Lands & Surveys is bound to issue the title to the said land to Ko-Nelayan save when Ko-Nelayan fail to meet or observe the terms and conditions of the offer to alienate or to complete all payments or to sign the draft title. Nobody, including the then Chief Minister of Sabah, could deprive Ko-Nelayan the said land that had been lawfully approved to Ko-Nelayan save with the consent of Ko-Nelayan or through the process of the law. The letter of the appellant, dated 20 December 1983, to the then Chief Minister of Sabah, is definitely not a lawful means of depriving Ko-Nelayan of 50 acres of the said land that had already been approved to Ko-Nelayan. When the appellant enlisted the help of the then Chief Minister of Sabah, they did not, in their said letter dated 20 December 1983, reveal to the said Chief Minister that the land had already been approved to Ko-Nelayan but merely state that the 50 acres were State land being used by Ko-Nelayan for its fish project which, according to the appellant, was no longer suitable for the project. The appellant had to enlist the said Chief Minister's help because, obviously, their application for the 50 acres could not be entertained by the land office since the 50 acres of land had already been approved to Ko-Nelayan. Any act, after the approval of the said land to Ko-Nelayan, without the consent of Ko-Nelayan cannot be lawful.

Be that as it may, the appeal to the said Chief Minister appears to work because it resulted in the said Secretary's letter dated 24 January 1984. As for this letter, I agree with Mr. Mohd. Salleh Lamsin that the letter said the application of the appellant can be approved subject to the terms and conditions stated in the letter. Two of the terms and conditions are:

(1) the appellant should sell to Ko-Nelayan its 13.14 acres of land which was then leased to Ko-Nelayan; and

(2) the appellant should build fish ponds on 50 acres of land similar to the ones which Ko-Nelayan had on the said land at such places as Ko-Nelayan designate:

Up to date, the said two conditions had not been fulfilled. It will be recalled that the appellant was sent a copy of the draft agreement, accompanied by a letter of Ko-Nelayan dated 7 November 1984, relating to the construction of the replacement fish ponds and it was also indicated by the said letter that the site for the replacement fish ponds were being looked for. The appellant indicated their acceptance of the terms of the draft agreement by their said letter dated 15 November 1984. The appellant also said in the letter that they await Ko-Nelayan to inform them of the date of the signing of the agreement. The agreement was in the end never finalised and signed. As for the other condition, that is, the sale of the 13.14 acres of land by the appellant to Ko-Nelayan, the appellant alleged that they had, after the respondent's said letter of 25 September 1984, "entered into discussions with Ko-Nelayan for the sale of its land ...

However, Ko-Nelayan indicated ...that it would purchase the aforesaid land after the expiry of the .... sublease ... on 18 March [1992]." It will be noticed that the allegation is not backed by any detail as to who in Ko-Nelayan the appellant had discussion. In any event, Ko-Nelayan decided by its letter of 31 March 1992, not to buy the land of the appellant. It cannot be imagined under what law the Secretary was invoking, to direct Ko-Nelayan to give up the 50 acres of land and to buy the 13.14 acres of land from the appellant. The fact is, the Secretary did not have such power. Even assuming that the Secretary had the power, it had been left open to Ko-Nelayan to negotiate the terms which virtually mean a decision whether to buy or not to buy. In the end, as was said earlier, Ko-Nelayan decided not to buy. This means that one of the conditions for the agreement to approve or for the approval of the 50 acres could not be fulfilled by the appellant. That being the case, the right of the appellant to have the 50 acres alienated to them has not arisen yet. It is my opinion that the only lawful thing the respondent should do in this matter is to issue the title or titles to Ko-Nelayan in respect of the said land which they had applied for, which had been approved to them, which they had paid part of the premium and which they had upon the said land, including the 50 acres, built fish ponds. For the reasons stated, the appeal should be dismissed. That effectually disposes off all the grounds of appeal stated in the said notice of motion.

Mr. Mohd. Salleh Lamsin also submitted that the appeal herein is in respect of a decision by the respondent whether or not to alienate State land within the meaning of s. 9 of the Land Ordinance (Sabah), which, for ease of reference, is reproduced here:

> 9 (1) Subject to any general or special direction of the Minister the Director may alienate State land on such terms or in such manner as is authorised by this Ordinance and may also impose special conditions in respect thereof to be set out in the title.
>
> (2) In particular such conditions may specify the particular product or class of products which or which alone is to be cultivated, and may forbid the cultivation of any particular product or class of products.

Such an appeal, according to Mr. Mohd. Salleh Lamsin, is prohibited by s. 41(1)(d) of the Land Ordinance (Sabah). Ms. Caroline Liau replied by saying that the appeal herein is not concerned with any decision of the respondent to alienate land but with the decision of the respondent not to issue the offer to alienate land to the appellant. The Court was referred to the definition of "alienate" in s. 4 of the Ordinance, *viz*: "'alienate' means to lease, or otherwise dispose of State land on behalf of the Government in consid-eration of the payment of such rent and of such premium, if any, as may be required;" as supporting her contention. The process of land application and approval must be understood to determine this issue. Land application has, under s. 12 of the Ordinance, to be made in the prescribed form either to the respondent or the Collector of Land Revenue ("the Collector"). The Collector will, after the receipt of such land application, publish a notice calling for claims of native customary rights in such land to be submitted. If there is no such claim, the respondent will then make a decision under s. 9 of the Ordinance. If he decides to approve the application for the land, he will cause to be issued a document called Offer to Alienate Land wherein all the terms and conditions will be spelt out, including a condition that the offer must be accepted within a specified time. If the land applicant accepts the offer, a draft title will be issued and this again has to be signed by the land applicant. After the execution of this draft title, it becomes the title to the land applied for and approved. It is my opinion that when the respondent decided not to issue the offer to alienate land to the appellant, it means the respondent had made a decision not to alienate the land to the appellant. Obviously, s. 9 of the Ordinance confers a discretionary power on the respondent whether or not to alienate land. See *Julius v Oxford (Bishop)*, 49 LJQB 585 5 App. Cas. 235 regarding the meaning of "may". A decision rejecting any application for land, which I equate to a decision not to issue the offer to alienate land, is nevertheless an exercise of the discretion granted by s. 9 of the Ordinance and is therefore a decision under s. 9 of the Ordinance. Since the refusal of the respondent to issue the offer to alienate land, which is equivalent to a decision not to alienate the land, is a decision within the meaning of s. 9 of the Ordinance, this appeal, I agree with Mr. Mohd. Salleh Lamsin, is incompetent because it is prohibited by s 41(1)(d) of the Ordinance.

Though not among the grounds of appeal in the notice of motion, Ms. Caroline Liau had also

argued that there was a failure to comply with the rules of natural justice when the respondent decided not to issue the offer to alienate the land. I do not see any injustice at all in this case being done to the appellant. What the appellant tried to do was to try to take away 50 acres of the said land which had, not only already been approved to Ko-Nelayan, but with fish ponds already built on the land by Ko-Nelayan as well. Whatever it is, when the respondent decided not to issue the offer to alienate land to the appellant, he was, as I ruled earlier, exercising a discretionary power under s 9 of the Ordinance for which the rules of natural justice do not pertain. There is no need to hear anyone when deciding whether or not to issue the offer to alienate land. It would have been a different matter if the appellant had already been issued the offer to alienate land and the respondent sought to revoke it; it is not the case here. There is also no merit in this ground.

Upon the premises, I dismiss the application of the appellant with costs to the respondent to be taxed.

SYARIKAT GEMAS PALM OIL TRADING

v.

ALCAN GETAH MALAYSIA SDN. BHD.

HIGH COURT, KUALA LUMPUR
HJ ABU MANSOR BIN ALI J.
[ORIGINATING MOTION NO R8-25-95 OF 1989]
26 AUGUST 1992

ARBITRATION: Application to set aside awards of Umpire and Appeal Board and for interim stay of execution of awards by applicant - Application for leave to enter judgment against applicant in terms of awards and to enforce judgment by respondent. - Whether the usage of PORAM Rules for Arbitration Act 1952 confers the right to legal representation in the arbitration - Whether the rules and constitution of PORAM are ultra vires s. 32 of the Arbitration Act 1952 in providing for exclusion of the Arbitration Act.

SOCIETIES: Whether the Palm Oil Refiners Association of Malaysia (PORAM) is a society under the Societies Act 1966 - Whether PORAM required to lodge a set of rules or constitution with the Registrar of Societies before registration - Whether the Societies Act 1966 also requires the lodging of PORAM Rules for Arbitration and Appeal with the Registrar of Societies - Consideration of ss. 7(3), 14(1) and Schedule 1 of the Societies Act 1966.

ARBITRATION: Allegation that respondent did not commence the arbitration but was given award - Whether any party misled - Whether documents marked 'without prejudice' could be relied on by the Appeal Board - Whether the amendment of the award by the Appeal Board was unlawful and contrary to natural justice - Whether parties initiating arbitration proceedings under the PORAM Rules for Arbitration and Appeal are required to fill the form in Appendix I of the Rules - PORAM FOB contract not signed by both parties - Whether there was in effect an arbitration agreement - Whether the arbitration proceedings was commenced within the period required by s. 1 r. 3(2) of the PORAM Rules of Arbitration and Appeal.

ARBITRATION: By s. 4 r. 1(1) of the PORAM Rules of Arbitration and Appeal an award is to be made within 30 days of the closure of proceedings - Whether the Umpire made the award outside the prescribed time - Whether there was re-submission of the respondent's case - Whether re-submission was in compliance with proper procedure - Whether the Arbitrators including the Umpire and the Appeal Board failed to adhere to the